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July 15, 1993

BY HAND DELIVERY

Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

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JUL 15 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Sirs:

Enclosed is an original and five copies of a Petition for Rulemaking titled "In the Matter of: Petition For Rulemaking To Determine The Terms And Conditions Under Which Tier 1 LECs Should Be Permitted To Provide InterLATA Telecommunications Services." This petition is filed pursuant to 47 C.F.R. § 1.401. Please return a date-stamped copy of the petition to the person delivering this package.

Sincerely,

Michael Kellogg

Michael K. Kellogg

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Petition For Rulemaking To Determine The Terms And Conditions Under Which Tier 1 LECs Should Be Permitted To Provide InterLATA Telecommunications Services	))))	R.M.-

PETITION FOR RULEMAKING

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SUMMARY

The Bell Companies ask the Commission to undertake a rulemaking proceeding in which the Commission will specify the safeguards that would govern BOC participation in long-distance markets.

In 1984, the Bell System was broken into pieces pursuant to an antitrust consent decree. This Commission has repeatedly and expressly stated that aspects of that decree -- in particular, the interLATA restriction imposed on the divested Bell Companies -- are hurting consumers and hindering the development of the advanced telecommunications infrastructure so critical to U.S. competitiveness in a global economy.

The Commission told the United States Court of Appeals for the District of Columbia Circuit that it was prepared to undertake a rulemaking to establish the rules and procedures governing Bell Company entry into interLATA markets. The Court of Appeals has acknowledged that offer and made clear that, once adequate safeguards against discrimination and cross-subsidy are established by the Commission, decree relief will follow.

In effect, then, the Court of Appeals has held that the Commission can retake the policy initiative in this area by setting the express terms and conditions for BOC entry into interLATA services. The Commission has already done so in many respects, with equal access and open network architecture requirements, with network disclosure and CPNI rules, with price cap rules that remove the incentive to cross-subsidize, and with detailed accounting safeguards as additional

protection against cross-subsidy. What is still needed, however, is a coordinated review of the full range of issues raised by BOC provision of long-distance services. The relevant safeguards already exist, they simply need to be adapted and applied to BOC provision of interLATA services.

The Bell Companies also ask the Commission to reaffirm its previous finding that BOC participation in long-distance markets, subject to safeguards specified by the Commission, is in the public interest. The case for that conclusion is stronger today than ever before. The line of business restrictions have impeded interLATA competition, which has not developed as vigorously as it should have. By contrast, the local exchange today faces rising competition from a number of different sources.

Given the rapid pace of change in the telecommunications industry, the decree's interLATA prohibition will be removed. The question is not whether the Commission must act on this matter, but simply when it will do so. It should do so now. Telephone markets have changed very rapidly in the 1980s, and will change more rapidly still in the 1990s. Given an appropriate regulatory framework, there can be no serious concern that local carriers will somehow recapture all of telecommunications, end to end. The regulatory challenge today is to construct a new regulatory paradigm that can properly accommodate full-fledged competition in the interstate long distance telecommunications business, as well as the competition developing within the States.

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PETITION FOR RULEMAKING

Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, and Southwestern Bell Corporation ("Bell Companies" or "BOCs") hereby petition for a rulemaking under Section 1.401 of the Commission's rules, 47 C.F.R. § 1.401. The Bell Companies ask the Commission to determine the appropriate terms and conditions under which the Bell Companies should be permitted to provide interLATA telecommunications services. The Bell Companies further ask the Commission to find that BOC provision of a full range of interLATA services is in the public interest.

For the past decade, many of the most important decisions governing the nation's telecommunications industry have been made, not by the Federal Communications Commission established by Congress to make those decisions, but by a single district court judge overseeing an antitrust consent decree. The Commission has repeatedly and expressly stated that aspects of that decree -- in particular, the interLATA restriction imposed on the divested Bell Companies -- are hurting consumers and hindering the development of the advanced telecommunications infrastructure so critical to U.S. competitiveness in a global economy. The district court judge has just as repeatedly and just as expressly rejected the Commission's views.

The United States Court of Appeals for the District of Columbia Circuit has made it clear, however, that the Commission is free to retake the policy initiative in this area. The Court of Appeals invited the Commission to establish the rules and procedures governing Bell Company entry into long-distance markets. The Court made clear that, once adequate safeguards against discrimination and cross-subsidy are established by the Commission, decree relief will follow. The time has come, then, for the Federal Communications Commission to recapture its statutory mandate to oversee competition in telecommunications.

I. The Need For Commission Action

The Federal Communications Commission was created with a broad mandate to "regulat[e] interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges" (47 U.S.C. § 151). During its first few decades, the Commission fulfilled that mandate by treating telephony as a natural monopoly and regulating it accordingly.

After World War II, however, increasingly rapid technological changes made competition both inevitable and desirable. The Commission responded to these changes by a series of regulatory reforms designed to open up telecommunications markets to competition so as to bring the benefits of that competition (lower prices and better service) to all Americans. Previously monopolistic markets for customer premises equipment and long-distance service were pried open by the Commission. Protected franchises were eliminated, quarantines were lifted, and rate-of-return regulation was replaced by modified price caps or by prices set by competitive forces. Emerging new markets for enhanced and mobile services were opened to competition from the beginning. The Commission focused its attention on ensuring equal interconnection to the public switched telephone network -- for long-distance carriers and for providers of enhanced services, mobile services, and CPE. Local exchange carriers were to be free to compete in all these markets, provided they followed FCC regulations designed to prevent discrimination and cross-subsidy.

A. The Conflict Between FCC Policies and the AT&T Consent Decree.

In 1982, even as the FCC's reform initiatives were gathering speed, an antitrust consent decree adopted in district court in the District of Columbia took a very different approach to the question of competition in the telephone industry. This decree isolated the local Bell

Operating Companies and precluded them from entering various competitive lines of business such as long-distance and information services. In contrast to the FCC's policy of inclusion, the consent decree adopted a policy of exclusion. In place of the FCC's attempt to have all industry participants compete on equal terms, the consent decree largely quarantined the BOCs.

The Commission was firm from the outset in its view that these "post-divestiture restrictions in Paragraph II.D. [of the decree] are unnecessary and unwise."[1] "Any provision that precludes any business enterprise from participating in any business activity," the Commission explained, "is a barrier to competition. Such a provision deprives the public of the benefits that might flow from actual or potential entry by the excluded firm."[2] "[T]he proposed restrictions on the divested BOCs," the Commission stated emphatically, "would do more harm than good and thus are not 'in the public interest.'"[3]

For the most part, the decree court rejected the Commission's conclusions. Relying on its own assessment that vigorous long-distance competition would develop without BOC

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[1] Brief of the Federal Communications Commission as Amicus Curiae on Stipulation and Modification of Final Judgment at 30, United States v. Western Elec. Co., CA Dkt. No. 82-0192 (D.D.C. Apr. 22, 1982).

[2] Ibid.

[3] Brief of the Federal Communications Commission as Amicus Curiae on Question No. 1 on Stipulation and Modification of Final Judgment at 11, United States v. Western Elec. Co., CA Dkt. No. 82-0192 (D.D.C. June 14, 1982).

participation and that the BOCs' own local exchange operations were "bottleneck monopolies," with a corrosive influence on adjacent markets, the decree court decided to enforce a strict separation between the two spheres.[4]

B. The 1987 Triennial Review.

In 1987, the Bell Companies sought removal of the interLATA restriction and other line of business prohibitions in the AT&T consent decree. The Commission actively supported those efforts. The Commission told the decree court that, whatever the original rationale for the line of business restrictions, "changes in technology, regulation, and the marketplace, as well as actual experience since divestiture, make it appropriate to lift the line of business restrictions of the decree."[5] The Commission noted that "the record three years after divestiture now establishes that there is little likelihood of competitive harm from BOC entry into most of the markets proscribed by the decree. At the same time," the Commission explained, "actual experiences since divestiture demonstrate the public welfare losses that have resulted from the entry barriers to a number of important telecommunica-

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[4]United States v. AT&T, 552 F. Supp. 131, 234 (D.D.C. 1982).

[5]Comments of the Federal Communications Commission as Amicus Curiae on the Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgement at 2, United States v. Western Elec. Co., CA Dkt. No. 82-0192 (D.D.C. March 13, 1987).

tions-related markets that have been imposed on seven entities with substantial technical and financial resources."[6]

The Commission stated that, if the restriction were removed, it would fashion appropriate regulations governing BOC participation in long-distance markets to prevent discrimination and cross-subsidy. The Commission carefully explained:

> [F]or all of the activities currently proscribed by the decree, including interexchange services, the Commission does not advocate "freeing the BOCs" to exploit their obvious advantages without safeguards. Rather, we contend that the absolute restrictions should be removed in reliance on regulatory safeguards and oversight. The regulatory protections, in conjunction with marketplace conditions, will prevent the BOCs from impeding competition. Under these circumstances, BOC entry will enhance, not retard, competition, thereby furthering the basic goal of the decree.[7]

The Commission argued that "the Court should lift the decree's restrictions on interstate, interexchange services on the basis of this Commission's commitment to address these admittedly difficult questions prior to BOC entry."[8]

The decree court again rejected the Commission's advice. This time, however, the Commission -- along with the Bell Companies and the Department of Justice (which had moved

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[6] Id. at 7.

[7] Reply Comments of The Federal Communications Commission As Amicus Curiae On The Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed On The Bell Operating Companies By The Modification of Final Judgment at 11, United States v. Western Elec. Co., CA Dkt. No. 82-0192 (D.D.C. May 22, 1987).

[8] Id. at 13.

closer to the Commission's viewpoint) -- sought review in the Court of Appeals. That Court recognized the force of the Commission's conclusion that regulatory safeguards could be developed governing BOC participation in the interLATA market. The Court decided, however, that the interLATA prohibition should not be lifted "until [FCC] regulations are adjusted to take account of BOC entry into the interexchange market."[9]

The Court of Appeals explained that the "persistence of their local exchange monopoly -- upon which interexchange carriers rely for access to ultimate consumers" -- raises concerns about discrimination and cross-subsidy. 900 F.2d at 300. The Court noted that the FCC had developed nondiscrimination safeguards and cost separation principles for BOC provision of CPE and enhanced services, but had not yet expressly applied those rules to BOC provision of interLATA services. "[U]ntil those regulations are adjusted to take account of BOC entry into the interexchange market," the Court concluded, "equal access and proper cost allocation cannot be assured." 900 F.2d at 301. See ibid. (noting "the danger of allowing entry before the FCC's regulations are designed to deal with the problem").[10]

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[9]United States v. Western Elec. Co., 900 F.2d 283, 301 (D.C. Cir. 1990).

[10]The D.C. Circuit recently reaffirmed the importance of FCC regulatory safeguards when it affirmed the removal of the information services restriction from the consent decree. United States v. Western Elec. Co., No. 91-5263, slip op. at 21 (May 28, 1993) (citing the FCC's "enhanced regulatory capability" as a result of the break-up and recent FCC initiatives).

In effect, then, the Court of Appeals issued an explicit invitation to the Commission to retake the policy initiative in this area by setting the express terms and conditions under which BOC entry into interLATA service is to be accomplished. The Commission has already done so in many respects, with equal access and open network architecture requirements, with price cap rules that minimize the incentive to cross-subsidize, and with detailed accounting safeguards as additional protection against cross-subsidy. What is still needed, however, is a coordinated review of the full range of issues raised by BOC provision of long-distance services. When -- and only when -- that is accomplished, responsibility for charting the future course of telecommunications in the United States will shift back to where it belongs, with the Federal Communications Commission.

II. The Proposed Rulemaking

In its Comments to the decree court in 1987, the Commission explained that it could determine the conditions under which the Bell Companies should be permitted to provide long-distance services in either of two ways:

> We submit that a Commission proceeding, undertaken either in response to BOC Section 214 applications for authorization to offer interstate services or as a separate rulemaking proceeding, provides the appropriate forum to address the complicated, technical and economic issues raised by BOC entry into the interexchange market. The Commission has the resources, expertise, authority, and procedures

to address the concerns of both ratepayers and competitors.[11]

The Bell Companies ask the Commission to take the second of these routes -- a separate rulemaking proceeding in which the Commission will specify the safeguards that would govern BOC participation in long-distance markets. Once that is accomplished, the Bell Companies will seek removal of the interLATA restriction from the district court.

The Bell Companies also ask the Commission, in conjunction with its rulemaking proceeding, to make a finding that BOC participation in long-distance markets, subject to safeguards specified by the Commission, is in the public interest. Such a direct statement, made in a rulemaking context, would supply the antitrust courts with a firm basis for returning control over this fast-changing industry to the Commission.[12]

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[11]Responsive Comments of the Federal Communications Commission As Amicus Curiae On The Report and Recommendations of the United States Concerning The Line of Business Restrictions Imposed on the Bell Operating Companies By The Modification of Final Judgment at 59, United States v. Western Elec. Co., CA Dkt. No. 82-0192 (D.D.C. Apr. 27, 1987).

[12]In a separate Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, CC Dkt. No. 93-662 (F.C.C. March 1, 1993), Ameritech has proposed a number of regulatory initiatives governing local exchange service. Ameritech makes absolutely clear, however, that its proposal "is premised on [Ameritech's] freedom to compete effectively against those firms who are and will continue to offer local and long distance service" (id. at 18-19) and, hence, that its "new regulatory model" will not be implemented until after "the granting of interLATA relief to Ameritech by the District Court" (id. at 16-17). Since the Court of Appeals has stated that an FCC review of the sort requested here is necessary for

A. BOC Participation in Long-Distance Markets Would Serve the Public Interest

The Commission has already twice concluded -- in its 1982 and 1987 comments to the decree court -- that BOC participation in long-distance markets would serve the public interest. The case for that conclusion is stronger today than ever before. Competition has developed very differently from Judge Greene's expectations, and very much in line with the FCC's predictions. The line of business restrictions have impeded interLATA competition, which has not developed as vigorously as it should have. By contrast, and largely as a result of FCC initiatives, competition is developing steadily in the local exchange. The local exchange "bottleneck" that so concerned Judge Greene is eroding, and with it any semblance of justification for retaining the interLATA prohibition on the BOCs.

1. Competition in the Long-Distance Industry. The Commission's assessment of the anticompetitive effects of the decree's line of business restrictions has been borne out by subsequent events in the long-distance industry. Despite the Commission's best efforts, long-distance competition has not developed as fully as it should have.

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interLATA relief, this proceeding should go forward on course regardless of Ameritech's initiative.

Only three facilities-based carriers, AT&T, MCI, and Sprint, operate nationwide.[13] As of 1991, these carriers earned a combined share of over 87 percent of revenues in the interLATA market.[14] AT&T's share stood at about 61 percent of revenues,[15] and about 60 percent of toll minutes.[16] AT&T has maintained its tremendous financial strength since divestiture -- rising calling volumes and declining access charges and other costs have kept revenues high despite some shrinkage in market share.[17]

The price of long-distance calls has roughly halved, and output in the market has roughly doubled in the 9 years since divestiture. But these sharp changes have been brought about almost entirely by changes in the costs of local exchange access. Annual carrier access charges paid by AT&T fell by $10.13 billion between 1984 and 1992. AT&T passed on only $8.22 billion of that amount in annual price reductions to

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[13]As one group of investment analysts has concluded, there "are only three players of any consequence in the business." The First Boston Corporation, Industry Report No. 1146643, Long Distance Telephone Industry 18 (Oct. 30, 1991).

[14]Industry Analysis Div., FCC, Long Distance Market Shares: Fourth Quarter 1992, at Table 6 (1993).

[15]Ibid.

[16]Id. at Table 3.

[17]Industry Analysis Div., FCC, Trends in Telephone Service 35 (Sept. 1992).

consumers.[18] In 1989 the FCC conducted a thorough analysis of this issue, and concluded that "[t]he single force most responsible for driving down long distance rates over the last several years has been [not price competition, but] the reduction of access charges long distance companies pay to local exchange carriers."[19] Indeed, the fact that AT&T has been able to pocket $2 billion of these reductions without passing them on to consumers is a striking illustration of the lack of price competition.

There is reason to believe that AT&T, MCI, and Sprint are engaging in umbrella pricing. It is clear that their prices have stabilized, which is itself a sign of oligopoly pricing. A 1989 working paper by the Commission's Office of Plans and Policy described the dynamics of this process:

> [O]ne firm behaves as a price-searcher and the others as price-takers. The price-searcher finds a price he likes; the others take that price as a given in deciding how much to supply, expanding their supply the higher the given price. The price-searcher takes these supply decisions into account (i.e., he anticipates the reactions of the fringe to the price he chooses) in deciding what price he likes. He, of course, prefers a high price, but the higher the price, the less he sells as consumers substitute other goods and the competing products of fringe suppliers. So he must

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[18]Taylor, NERA, Effects of Competitive Entry in the U.S. Interstate Toll Markets: An Update, at Table 1 (May 28, 1992).

[19]Policy and Rules Concerning Rates for Dominant Carriers, 4 F.C.C Rcd 2873, 3054 (1989).

balance the gains and losses of a higher price in deciding what price maximizes his profit.[20]

Many investment analysts agree that this is what is now happening in the long-distance industry. The industry is settling down as a "nice, stable oligopoly,"[21] which is "[t]he best of all worlds for investors."[22] The market has a "stable, oligopolistic-type structure."[23] "AT&T can dictate industry pricing in the near-term."[24] AT&T is "promoting pricing stability."[25] AT&T is providing "a price umbrella under which the other firms operate."[26] AT&T will not start a price war because it "has too much to lose by cutting prices aggressively: financially (it would destroy margins), politically (political backlash at a time when the company is seeking deregulation) and legally (fear of an antitrust

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[20]FCC, OPP Working Paper No. 25, What Makes the Dominant Firm Dominant? 3-4 (Apr. 1989).

[21]Paine Webber, Inc., Industry Report No. 1105870, Long Distance Industry 6 (Feb. 25, 1991).

[22]Sanford C. Bernstein & Co., Industry Report No. 1043293, AT&T Turns Long Distance Upside Down 3 (Nov. 21, 1990).

[23]Id. at 1.

[24]Oppenheimer & Co., Industry Report No. 1130454, Long Distance Industry 1 (July 19, 1991).

[25]Oppenheimer & Co., Industry Report No. 1140733, Long Distance Industry Third Quarter Review 1 (Sept. 23, 1991).

[26]Donaldson, Lufkin & Jenrette, Industry Report No. 930628, Telecommunications Services 3 (Aug. 28, 1989).

suit)."[27] Margins will "stabilize or even expand moderately" as all three carriers "use excess cash generation to expand the bounds of the industry through entry into markets both overseas and at home, particularly competition against some of the RBOC toll and access services."[28]

Plainly, an infusion of new competition from seven large, experienced competitors could rapidly lead to lower prices and an explosion of new services.

2. Competition in the Local Exchange. The architects of the divestiture decree did not believe that local exchange competition was sustainable. They assumed that the local exchange monopoly reflected immutable economic imperatives that even antitrust law could not challenge. Nonetheless, by 1987, at the time of the first Triennial Review, many of the constituent elements of local exchange competition -- private switches, competitive urban networks, and so on -- were already being deployed. Today, competitors are rapidly assembling full-fledged alternative networks, using new architectures, new media, and radically new technologies.

The local exchange faces rising competition from four different sources: from the providers of "inside wiring" and

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[27]Donaldson, Lufkin & Jenrette, Industry Report No. 921475, Telecommunications Services 5 (June 27, 1989); see also R. Crandall, Telecommunications Policy in the Reagan Era, No. 3 Regulation 31 (1988).

[28]Sanford C. Bernstein & Co., Industry Report No. 1043293, AT&T Turns Long Distance Upside Down 3 (Nov. 21, 1990). See also Staff of the Federal-State Joint Board, Monitoring Report, CC Dkt. No. 87-339, at 421-424 (Table 5.9) (May 1993).

"private exchanges," which are replacing LEC facilities on customer premises; from radio providers, which are replacing copper in the last mile; from competitive access providers (CAPs), which are reaching up to permit their customers to connect directly to long-distance carriers; and from cable carriers, which are beginning to offer interactive services to the home, both on their own and in alliances with radio and competitive access providers.

On Customers' Premises. In 1982, Judge Greene confidently declared that inside wiring "is as much a 'bottle-neck' as are the subscriber access lines."[29] Judge Greene was mistaken. Just two years after divestiture, the FCC concluded that inside wiring could be provided competitively, and ordered that it should be.[30] The inside wiring "bottleneck" has since completely disappeared.

Private branch exchanges (PBXs) represent a second tier of direct competition with the "local exchange monopoly." In the conventional architecture of the public telephone network, telephone wires converge at a first-tier switch -- the local public exchange. Public telephone companies in fact own and operate more than 22,000 local exchanges nationwide. In the economic model accepted in 1982, the local exchange -- the

[29]United States v. Western Elec. Co., 569 F. Supp. 1157, 1129 (D.D.C. 1983).

[30]Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (1986), on recon., 1 F.C.C. Rcd 1190 (1986), on further recon., 3 F.C.C. Rcd 1719 (1988), remanded sub nom. NARUC v. FCC, 880 F.2d 422 (D.C. Cir. 1989).

switch itself -- is the heart of the "natural monopoly." Since 1982, however, competitive alternatives have proliferated. For almost any business, hospital, university campus, or government building,[31] customer-premises wiring can -- and often will -- converge on a small, privately-owned local switch.

Radio. There are now 11 million users of cellular telephones, and annual growth rates are in the range of 30 to 40 percent.[32] In 1991, an estimated 2.5 million new cellular phones were put into service, substantially more than the 1.9 million loops added to the landline network.[33] The capacity of cellular networks continues to grow rapidly, as providers shrink cell size.[34] Digital compression technology will soon expand the capacity of cellular radio services considerably beyond present levels.[35] And, within the next few years, the

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[31]A PBX is most commonly owned and used by a single organization. But the owner of a PBX, much like the owner of a public switch, can easily share and resell its switching capacity.

[32]Communications Daily, Apr. 30, 1992, at 7.

[33]M. Carnevale, Long-Distance Phone Companies Gird for Wireless War, Wall St. J., Aug. 5, 1992, at B4.

[34]In 1984, for example, NYNEX began providing city-wide cellular service in New York City with 18 cells. Today the company operates 340 cells in the city, including microcells one-half to two miles in diameter, and expects to operate more than 700 cells by 1994. Communications Daily, July 23, 1992, at 8.

[35]Today's cellular systems in Los Angeles, for example, have a theoretical capacity of about 700,000 users; that capacity will soon rise toward 14 million users, sufficient to serve two phones for every adult and child in the greater Los

Commission will issue spectrum licenses to new radio-based operators sufficient to offer as much local carriage as is currently used by all landline customers.[36] Telocator projects that there will be more than 50 million PCS users by the end of the decade, and more than 60 million users of paging, cellular, and specialized mobile radio.[37] Arthur D. Little predicts that PCS could penetrate 40 percent of the residential market by the end of the decade.[38] The FCC itself has recently cited projections of "60 million PCS users in the U.S. within ten years."[39]

Angeles area. A. Ramirez, Next for the Cellular Phone, N.Y. Times, Mar. 15, 1992, § 3, at 7.

[36]The FCC has announced its intention to allocate 220 Mhz of new spectrum for PCS and other "emerging telecommunications technologies." Notice of Proposed Rulemaking and Tentative Decision at 12, In re Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Dkt. No. 90-314, ET Dkt. No. 92-100 (FCC Aug. 14, 1992) (hereinafter PCS NPRM). Congress may allocate even more spectrum. The Emerging Telecommunications Technologies Act of 1993, sponsored by Rep. John Dingell and Rep. Ed Markey and passed by the House on May 27th, would transfer an additional 200 MHz of government spectrum to the private sector. A system of competitive bidding was proposed as the mechanism for distribution of this spectrum.

[37]Telocator Study Says PCS Licensing By 1994 Could Bring 23,300,000 Customers By 1997, Telecommunications Reports, June 1, 1992, at 19.

[38]F. Dawson, The PCS Puzzle, Cablevision, June 1, 1992, at 33. Another industry analyst predicts continuing allocation of spectrum for personal communications and notes that as a result, "[a]dded service providers are guaranteed." Dean Witter, Telecommunications Industry: The Eroding Monopoly 5 (Mar. 20, 1991).

[39]PCS NPRM ¶ 26.

The impending merger of AT&T and McCaw is a watershed development in this context. This transaction will combine the overwhelmingly dominant long-distance carrier and dominant mobile switch manufacturer -- AT&T -- with the largest provider of cellular service -- McCaw. Given the very likely evolution of radio technology in the 1990s, AT&T's acquisition of McCaw must be viewed as a decision to reenter the local telephone business in direct competition with the Bell Companies.

Competitive Access Providers. CAPs did not exist at all in 1982, and the possibility of this kind of competition did not figure in the decree's "natural monopoly" assumptions. Even in 1987, only five cities were served by CAPs. Metropolitan Fiber Systems, Inc. (MFS), now the operator of the largest number of alternative access networks, was founded only in 1988.[40] The industry has since expanded rapidly. A 1991 count found approximately 30 separately-managed CAPs serving over 40 cities.[41] CAPs now operate in 24 of the top 25 metropolitan service areas, and serve the cities and regions that contain the headquarters of approximately 70

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[40]D. Bushaus, Weaving an Alternative; Metropolitan Fiber Systems, Inc. Installs Fiber Bypass Network, Telephony, Sept. 11, 1989, at 48.

[41]J. Kraemer, Deloitte & Touche, Telecommunications Industry Program, 1991 Monograph Series, Competitive Assessment of the Market for Alternative Local Transport (1991). See also Telecommunications Reports, Nov. 18, 1991, at 14.

percent of the companies that appear on the Communications Week 100 List.[42]

The most important sources of business for CAPs lie in connecting privately operated switches and computers to the long-distance network, straight through the heart of the local exchange "monopoly," and in connecting the "points-of-presence" (POPs) of various interLATA carriers. The CAPs do not have to woo individual end users directly; instead, the interLATA carriers bundle CAP-supplied access with their own long-distance services. AT&T, like other interLATA carriers, has entered into numerous agreements with CAPs to provide access from private switches and computers directly to AT&T's premises. For many business customers, competition on customer premises is thus converging with competition in the long-distance market.

On September 17, 1992, the FCC required local telephone companies to permit either physical or "virtual" collocation for interstate special access services.[43] Collocation will be

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[42]As a sign of its financial health and the vigor of the industry generally, MFS has just completed an initial public offering of 12,650,000 shares of common stock at a price of $20 per share. Net proceeds from the offering will be used by the company for the expansion of its existing networks and services as well as the development of new networks and services. <u>MFS Communications Company, Inc. Public Offering Closes; 12.6 Million Shares Sold</u>, PR Newswire, May 26, 1993.

[43]<u>Expanded Interconnection Mandated for Interstate Special Access (Nos. 91-141, 92-222)</u>, FCC News, Sept. 17, 1992. Interstate special access is a $2.6 billion market, as compared to $4.1 billion for interstate switched access services. <u>Expanded Interconnection with Local Telephone Company Facilities</u>, 6 F.C.C. Rcd 3259, 3270 (1991).

permitted for any CAP, cable company, private customer, or interLATA carrier, including AT&T.[44] That decision, according to the President of Metropolitan Fiber, will allow the company to "extend our current services to almost every business in America."[45] The Commission has also tentatively determined to require local telephone companies to allow collocation for interstate switched access services subject to completion of a further rulemaking.[46]

Cable. In 1982 the cable industry had fewer than 30 million subscribers,[47] and passed only 49.5 million homes.[48] The 1978 Pole Attachment Act was only just beginning to have a discernible impact; the cable industry was still handicapped by inconsistent state and federal regulation that persisted until the enactment of the Cable Act of 1984, immediately

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[44]Ironically, the Department of Justice remains nervous about AT&T collocating in the BOCs' central offices. See Reply Comments of the United States Department of Justice at 14, 32-33, Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141 (F.C.C. Sept. 23, 1991).

[45]M. Carnevale, FCC Votes to Open Local Phone Firms to Competition by Fledgling Networks, Wall St. J., Sept. 18, 1992, at A7.

[46]Expanded Interconnection Mandated for Interstate Special Access (Nos. 91-141, 92-222), FCC News, Sept. 17, 1992.

[47]NCTA, Cable Television Developments 2-A (Mar. 1993).

[48]Ibid. (citing Paul Kagan Assoc., Cable Television Investor Newsletter (Nov. 21, 1990)).